

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

2005 JUL 27 2:47
CLERK OF COURT
DISTRICT OF MASSACHUSETTS

AUGUSTO CORNELIO
Defendant,

v.

Case No.:03-10252-RGS

UNITED STATES OF AMERICA
Respondent

LETTER MOTION REQUESTING DECISION OF THE CASE
AUGUSTO CORNELIO V. UNITED STATES, NO. 1:05-CV-10163

Comes Now, Defendant, Augusto Cornelio, acting prose and avers the following information fo the course review:

1. On January 13, 2005 the Defendant send a Motion with Memorandum of Law under U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in Federal Custody, copies to be distribute to the proper channels was included.
2. An amendment to support the U.S.C § 2255, base on the January 12, 2005 desicion of the Supreme Court on the case of Blakely v. Washington, was sended to the District Court of Massachusetts, after the original Motion and Memorandum of Law was send, it was done in accordance with the public decision of the court with respect to the enhancements on the cases of **Booker** and **Fanfan**.

LETTER MOTION TO THE DISTRICT COURT
AUGUSTO CORNELIO V. UNITED STATES, NO.:03-10252-RGS PG#2

3. On January 31, 2005, the Court issue an order directing the Clerk of the District Court to serve a copy of the petition on the government and directing the government to file a responsive pleading within twenty days of its receive of said petition. As consequence of such order, the government's response was required to be filed on or about February 22, 2004.
4. The Defendant who (plea) on Octover 23, 2003, and was sentence on January 22,2004 to 70 months setence due to the violation of two counts, Count 1 U.S.S.G. § 2L2.2, 18 U.S.C. §1542 False statement in Passport application and count 2 U.S.S.G. §2L1.2 8 U.S.C. § 1326 (a) and (b)(2) Illegal Re-entry. The Defendant plead guilty to count 2 U.S.C. §1326 (a)(b)(2) and the government dropped Count 1 from the indictment.
5. The petitioner claim in his 28 U.S.C. §2255 ground 1 that:
 - 1.**Movant was denied effective assistance of counsel.**

Movant's counsel had procedurally defaulted in his civil duties of giving his cleint a proper defense due to the fact that counsel had failed to raise and Apprendi or Day-like issue.
 - 2.**Movant was unconstitutionally enhanced by 16 points levels.**

Movant's Criminal History Level was grossly misrepresented the criminal history did not warrant a category five placement. this misrepresentationjustify the trial (although illegal)past conviction, states convictions for federal cases enhancements are illegal.See T. Litter v. US, F Supp. 2d 2002 WL 1424581(D.Mass)

**LETTER MOTION TO THE DISTRICT COURT
AUGUSTO CORNELIO V. UNITED STATES, NO.: 03-10252-RGS PG#3**

Shepard .v Untied States, No. 03-9168 Certiorari to the United States Court of Appeals for the First Circuit.

The Defendant prior conviction was not crime of violence, in reviewing the government respond and Defendant 28 U.S.C § 2255 it is clear that:

1. The indictment must state the specific offense characteristic
2. The government must prove that element to a jury
3. That element must be proven beyond reasonable doubt

None of this 3 conditions was taken in consideration at the sentence of petitioner since the Honorable Judge Browning ruled that his refusal to apply the 16-level enhancement was because he had to make a finding that the prior conviction was indeed a crime of violence, it never happened.

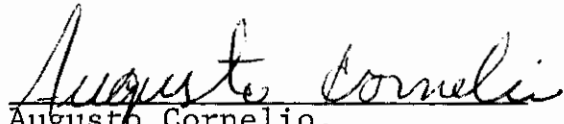
The Defendant asks the court for a resolution of his case and a re-sentence on the instant offense alone, which carried a Base Offense Level of 8, at Criminal category history 5, that is a 15-21 month incarceration. In conclusion after submitting the §2255 and the cases of law that stated clearly the reason for resentence the Defendant, his conviction and sentence should be dismissed and resentence to the appropriated level.

Respectfully submitted,


Augusto Cornelio (pro-se)

CERTIFICATE OF SERVICE

I, Augusto Cornelio, Petitioner, acting Pro se, do hereby certify that I have served this motion along with my original § 2255 motion, and swear under the penalty of perjury, that everything in the aforementioned letter motion is true to the best of my ability, so help me God.


Augusto Cornelio,
Federal ID No.: 24838-038